IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1042 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HADTA SEVA SAHAKARI MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

DELETED for Respondent No. 1

MR PK JANI for Respondent No. 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 15/02/2000

ORAL JUDGEMENT

The petitioner seeks to challenge the order dated 27.1.1999 passed by the revisional authority under Section 155 of the Gujarat Co-operative Societies Act, 1961, by which the appellate order dated 12.10.1998 was set aside and the resolution of the District Panchayat

dated 29.6.1998 was restored.

2. By the resolution No. 64 dated 29.6.1998 the respondent No. 5 proposed society was registered under the provisions of Section 9 of the said Act and the application of the petitioner for such registration was rejected. The petitioner had preferred appeal No. 99 of 1998 under Section 153 of the said Act against that Resolution and the Additional Registrar (Appeal) set aside the resolution on the ground that it was passed without hearing the parties and then the decision ought to be taken on merits after hearing the parties. It was also found that the subject was not on the agenda and it was taken up at the instance of the Chairman. This order of remand was challenged by the respondent No. 5 under Section 155 of the said Act in Revision Application No. 8 of 1999 before the State Government. The revisional authority holding that the petitioner not being a registered society was not an affected party and therefore could not have filed an appeal against the order of registration of the respondent No. 5 and further that there was no prayer for remand made in the appeal memo of the respondent No. 5, held that the remand dated 12.10.1998 by the Additional Registrar (Appeals) was not justified. An observation was also made in respect of the resolution dated 24.12.1998 which is said to have been passed after the remand order that there was no record produced to show whether the parties were heard before making that resolution. It was held that the revision application filed against remand order was tenable notwithstanding the fact that after the remand, a resolution came to be passed by the Committee of the District Panchayat.

3. The learned counsel appearing for the petitioner submitted that for the purpose of Section 153 which provided for an appeal against the order or decision under Section 4 of the Act, a proposed society would be a person affected if its application is rejected and therefore the revisional authority has committed an error in holding that the proposed society could not have filed the appeal.

4. Under Section 2(19) of the Act society is defined so as to mean a co-operative society registered or deemed to be registered under the Act. Section 4 indicates as to what societies may be registered and cases in which registration may be refused. Section 9 provides for registration, provisional registration and certificate of registration on receipt of an application for registration from a society. It appears that the

revisional authority in holding that the appeal could not be filed by the Society unless it was registered was coloured by the definition of `Society' in Section 2(19). In the opening part of Section 2, it is clearly indicated that the definitions have to be understood as per the meaning given unless the context otherwise requires. When a society applies for registration under Section 4 read with Section 9, obviously, it would be a society which is not yet registered. Therefore, the word `society' in context of sections 4 and 9 would be a society which seeks registration and not a society which is already registered. Section 153, inter alia, provides for an appeal against any order made under Section 4 or 9 of the said Act. Obviously therefore, when an application for registration of a proposed society is refused, an appeal would lie against such an order under Section 153(1) at the instance of the person who is aggrieved against the order refusing to register the society proposed by him for registration. The revisional authority therefore committed an error in holding that appeal could not have been filed by the petitioner under Section 153 on the ground that the petitioner was not a registered society and therefore was not an affected party. The finding of the revisional authority on this ground is clearly against the provision of Section 153 of the said Act.

5. The other ground for allowing the revision application given by the revisional authority, that there was no prayer for remand, is also misconceived. When a prayer was sought for setting aside the resolution of the Committee of the District Panchayat which was exercising the powers of a Registrar in view of the notification issued by the Government under Section 156 of the Gujarat Panchayats Act, 1961, it was open to the appellate authority to make an order of remand. There need not be any separate prayer for an order of remand. In fact, when orders are challenged, it is when implied that the appellate authority finds it necessary to remand the matter, it can always do so. Therefore, the appellate order remanding the matter was a valid exercise of jurisdiction by the appellate authority.

6. It was contended for the petitioner that the revisional authority ought not to have entertained the revision application in view of the development subsequent to the remand order. After the remand was made on 12.10.1998, there was a meeting of the Committee of the District Panchayat on 24.12.1998 in which a resolution was made in favour of the petitioner by registering the society proposed by him and against the

respondent No. 5. The appeal was filed against that resolution under Section 153 of the Act by the respondent No. 5, which is still pending before the appellate authority. It appears that the revision application was filed on 8.1.1999 which was after the resolution of the Committee dated 24.12.1998 passed pursuant to the remand order. The question is whether such subsequent development would take away the revisional power exercisable by the State Government under Section 155 of the Act or whether the exercise of revisional power after such subsequent event can be said to be an erroneous exercise of the revisional jurisdiction under Section 155 of the Act. Under Section 155 of the Act it is, inter alia, provided that the State Government may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to it, except those referred to in sub-section (9) of Section 150, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer; and if in any case, it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may after giving persons affected thereby an opportunity of being heard pass such order thereon as it may deem just. It will thus be seen that the powers conferred on the State Government under Section 155 are of wide amplitude and the State Government was empowered to modify, annul or reverse the order of remand made by the appellate authority under Section 153 of the Act and to pass such order as it deemed just. This statutory power cannot be taken away just because the order of remand was not stayed and therefore the proceedings pursuant to remand did take place. The fact that such proceedings had taken place was taken note of by the revisional authority but it deemed it just to exercise its revisional powers. The exercise of revisional power or the validity of its exercise cannot be complained against by the petitioner on the ground that after the remand order, fresh decision was taken which again is in challenge in an appeal filed by the respondent No. 5.

7. However, as noted above, the grounds given by the revisional authority for remanding the matter are contrary to the provision made under Section 153 of the Act which empowers an applicant whose registration is refused, to file an appeal. The impugned order of the revisional authority cannot therefore be sustained and is hereby set aside. The revisional authority shall, after hearing the parties on all points that they may urge before it, take a fresh decision in the matter in

accordance with law and in light of the observations made in this judgement, expeditiously, preferably within four months after receiving the writ of this order. It will be open for the revisional authority to take into consideration any contention, that may be raised before it in context of appellate proceedings pending against the resolution passed after the remand. Rule is made absolute accordingly with no order as to costs.

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